IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4398 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI SONAJI MARVADI

Versus

AHMEDABAD MUNICIPAL CORPO.

Appearance:

MR NV SOLANKI for Petitioners
MR PRASHANT G DESAI for Respondent No. 1
MR DP JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE C.K.BUCH

Date of decision: 13/12/2000

CAV JUDGEMENT

(Per : MR.JUSTICE C.K.BUCH)

1. In all 42 petitioners have filed this petition under Article 226 of the Constitution of India in the matter arising under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the "BPMC Act") and have prayed for issuance of writ of mandamus or any other appropriate writ, order or direction declaring the orders dated 24.3.2000 and 13.4.2000 issued by respondent no.1 Ahmedabad Municipal Corporation (hereinafter referred to as "Corporation") as unlawful, arbitrary, unjust, malafide and discriminatory in all respects and have further prayed that these orders are violative of fundamental rights of the petitioners guaranteed under the Constitution of India. They have also prayed for other consequential reliefs including the prohibitory orders against eviction from their hutments.

2. The petitioners have claimed that they are the residents of the hutments known as "Khari-Par-na-Chhapara" located in the area covered under the Town Planning Scheme known as "Naroda T.P.Scheme No.1". Revenue Survey Number on which hutments stand is 494 along with Govt. Naliya which was given OP No.221 & 222/1. It is contended by the petitioners that they are residing in the hutments since 1970-71 and they being the occupants of the land since 30 years, they have a right to continue possession and enjoyment of their respective hutments as hutment dwellers. According to the petitioners, Naroda Nagar Panchayat, vide its letter dated 17.12.1981, represented the case of the petitioners hutment-dwellers residing on the land bearing OP No.221 and submitted to the competent authority that this land should not be included in road-site land. Panchayat objected against the scheme showing road in revenue survey no.494 and Govt. Naliya and requested for revision of proposal before its finalisation.

3. We have considered the relevant averments made in the petition and the facts reflected in the letter addressed to the Chief Town Planner, State of Gujarat along with annexures.

4. The petitioners have alternatively contended that respondent no.1 Corporation has evolved a policy to regularise the hutments and/or to provide proper place to erect the hutments. Notice issued by respondent no.1 Corporation to the hutment-dwellers on 24.3.2000 indicates that these hutments are encroachers on the road and the encroachment is on the part of the land which is allotted to one of the Final Plot owners. Affidavit filed by respondent no.1 Corporation which is at page-91,

also reveals that it is obligatory duty of respondent no.1 Corporation to allot the land to the Final Plot Owner and the land is to be handed over against the adjustment free from all encumbrances and the same should be given to such owner with peaceful vacant possession.

5. Learned counsel appearing for the petitioners has concentrated on all grounds agitated by the petitioner, but mainly he has hammered the grounds taken in sub-para-(L), (L-1) and (M) of the petition.

6. On careful consideration of the documents available, it reveals that some of the hutment-dwellers were granted electricity supply. Of course, all the petitioners have not produced such document. Date of electricity bill and identity cards issued under the directions of the Election Commission of India, do not support the case of the petitioners that they are residents of this area since 1970-71. Even for the sake of arguments it is accepted that the petitioners are residing in the hutments situated on revenue survey no.494 i.e. OP No.221 & 222/1, the possession of these lands by the petitioners can be termed as unauthorised encroachment. Undisputedly, some of the hutments, as per the map shown to us by respondent no.1 Corporation, are within the road boundary of OP No. 221 and some of them are in Final Plot No.452 (OP No. 221 and 222/1). The petitioners have failed in producing satisfactory documentary evidence before the Corporation to show that they have been residing on the said lands since last many years. For the first time, case of some of the hutment-dwellers was pleaded by Naroda Nagar Panchayat in the year 1981. It is also on record that the petitioners have not produced any satisfactory documentary evidence to establish the fact that they are residing on the lands in question before the said area was included within the limits of Corporation. Considering the scheme of the Gujarat Town Planning & Urban Development Act, 1979 and especially provisions of sections 67, 68 & 69(1)(a) of the said Act, it is clear that on and after the date on which the preliminary scheme comes into force, the appropriate authority is entitled to remove, pull down or alter any building or other work in the area included in the scheme which contravenes the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with, after giving prescribed notice in accordance with the provisions of the Scheme. In this case, respondent no.1 Corporation has served notice as "appropriate authority" to the petitioners for its intention to remove or pull down the hutments situated on lands in question by assigning reasons. Four our purpose, sec.108 of the Act is relevant which reads as under:-

"Sec.108. Vesting of property and right of appropriate authority ceasing to exist or cease to have jurisdiction.

Where any appropriate authority ceases to exist or ceases to have jurisdiction over any area included in a development plan or town planning scheme, the property and rights vested in such appropriate authority under this Act shall, subject to all charges and liabilities affecting the same, vest in such other appropriate authority or authorities as the State Government may, with the consent of such authority or authorities, by notification, direct; and such appropriate authority or each one of such appropriate authorities shall have all the powers under this Act in respect of such plans, schemes or such part of a plan or scheme as comes within its jurisdiction which the appropriate authority ceasing to exist or ceasing to have jurisdiction had. "

7. Considering the averments made in the petition and the affidavit filed by the petitioners in support thereof vis-a-vis the say of respondent no.1 Corporation, it is undisputed that scheme viz. preliminary scheme submitted to the Government is approved. It is not the case that the government had refused to sanction the scheme proposed. On the contrary, it is on record that by exercising powers conferred under sec.65 of the Gujarat Town Planning & Urban Development Act,1976, the Government has approved the scheme and the same has become final. It is not the case of withdrawal of the scheme or any variation in the approved final scheme. Considering the provisions of sec.67 of the Gujarat Town Planning & Urban Development Act, 1976, all the lands required by the appropriate authority have vested absolutely in the appropriate authority free from all encumbrances on the day on which preliminary scheme has come into force. All rights in the original plots, on reconstitution into final plots, are determined and, therefore, respondent no.1 Corporation has powers, in the capacity of the appropriate authority to evict any person contending to occupy any land which he is not entitled to occupy under the preliminary scheme. It is rightly argued by the learned counsel appearing for the respondent no.1 Corporation that the respondent no.1 Corporation is eager to implement its resolution if the petitioners are able to satisfy the respondent no.1 Corporation that they were occupants of a particular land

prior to the specified date and they can claim alternative place, but the reliefs claimed by the petitioners cannot be granted. We would like to refer to the ratio propounded by the Apex Court in the case of The Municipal Corporation for Greater Bombay and another v/s The Advance Builders (India) and others, reported in AIR 1972 SC 793, wherein, the Apex Court has observed that:

"10. The Scheme and the Regulations made thereunder must be read as supplemental to the Act and, when that is done, there is no room for any doubt whatsoever that the local authority is entirely responsible for removing the huts, sheds, stables and other temporary structures which contravene the Town Planning Scheme. The Scheme gives a statement of works to be constructed under the Scheme which comprises a number of roads and the drainage system. The Scheme then specifies which final plots under the Scheme are reserved for public or municipal purposes. In the section dealing with the regulations controlling the development of the area under the Scheme, the various final plots are mentioned and directions have been given as to how they are to be utilised. Regulation 6 is as follows:-

"No hut or shed whether for residential user or otherwise, or temporary moveable shops on wheels or such other temporary structures shall be allowed within the area of the Scheme."

It is possible to construe this regulation as prospective in operation, because Regulation 9 provides that any person contravening any of the aforesaid regulations or any of the provisions of the Scheme is liable tobe prosecuted and fined. As a part of the Scheme, there is a Redistribution and Valuation Statement which shows which are the original plots, who were the owners thereof, whether those plots were encumbered or leased out, who the mortgagees and lessees were, what is the number of the reconstituted or the final plot allotted to such owners, what contributions have to be made by the owners and what additions or deductions are to be taken into account while deciding the contributions. In the case of some of the final plots, certain rights are given and liabilities imposed and, in suitable cases, compensation also is directed to be paid. And then, to this

Redistribution and Valuation Statement, eleven Notes are appended which are important. Note 1 says that all rights of mortgagors or mortgagees, if any, existing in the original plots are transferred to their corresponding final plots. Note 2 deals with the rights of lessor and lessees in the original plots. By Note 3, all rights of passage hitherto existing are extinguished. By Note 4, agreements in respect of original plots are transferred to the final plots. By Note 5, the tenures of all original plots are transferred to the corresponding final plots. Note 6 permits the original plot-owners to remove their detachable material on the plot if they are deprived of the same. They are required to remove their wire-fencing, compound wall, sheds, huts or other structures. They can do so within three months from the date on which the final Scheme comes into force, the idea being that the final plots must be clean plots for being allotted to another under the Scheme. This permission under Note 6 has given note because the local authority has no power to remove wire-fencing, huts, sheds etc; that power is there as already shown under Section 55. But this is a concession made in favour of the owner. Since the owner is required to remove himself from this plot, he is permitted to take away whatever material he could easily remove. And, then, Note 11, to which reference has already been made, provides that all huts, sheds, stables and such other temporary structures including those which do not conform to the regulations of the Scheme, are required to be removed within one year from thee date the final Scheme comes into force. The Note refers not merely to huts, sheds, stables which do not conform to the regulations of the Scheme, but also to all huts, sheds, stables and such other temporary structures. Whosever the owner or the occupant of the same might be, he is required to remove the same within one year from the date the Final Scheme comes into force. This is an important regulatory provision which has the effect as if enacted in the Act. If the owner or the occupant of these huts sheds and stables does not remove the same within one year from the date the final Scheme comes into force, he would be contravening the provisions of the Scheme and, thereupon, the local authority will have the power under S.55(1)(a) to remove or pull down these huts,

> sheds, stables, etc. Note 11 has taken due note of the fact that if the huts, sheds, stables, etc. are demolished, the owners or occupants thereof will become dishoused. Hence, further provision is made that persons thus dishoused will be given preference in the allotment of land or accommodation in Final Plot No.16 allotted to the Corporation. In other words, it is implicit in this Note that the Corporation may not hesitate to pull down or remove these huts and sheds etc. because provision is already made for allotment of land in the Corporation's Plot. The Note, therefore, indirectly establishes that it is the primary duty of the Corporation as the local authority to remove all offending huts, sheds, stables and temporary structures in the whole area under the Scheme and not merely from those areas which are allotted to the Corporation under the Scheme."

8. In view of above settled legal position, the respondent no.1 Corporation is entitled to execute the scheme and wishes to perform its duties which it otherwise is obliged to perform under the provisions of the Act. In nutshell, in view of what is stated herein above, there is no merit in this petition and the same requires to be dismissed.

9. In the result, petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated. As the petitioners re hutment-dwellers, we are not inclined to award costs.

13-12-2000 [B.C. PATEL, J]

[C.K. BUCH, J]

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